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SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOHN CARTER,

Plaintiff,

vs.

SMITH'S FOOD AND DRUG CENTERS,
INC., d/b/a SMITH'S FOOD AND DRUG
CENTER #372, a Foreign Corporation;
DOES 1 through 20; ROE BUSINESS
ENTITIES 1 through 20, inclusive jointly and
severally,

Defendants.

CASE NO.

NOTICE OF REMOVAL

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. (hereinafter "SMITH'S") hereby gives notice of its removal of Case No. A-17-756846-C from the Eighth Judicial District Court, Clark County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

I.
NOTICE OF REMOVAL IS TIMELY

1. On June 13, 2017, Plaintiff JOHN CARTER, filed this lawsuit against SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the Complaint and process, is attached hereto as Exhibit "A".

2. SMITH'S was served with process on or about August 3, 2017. SMITH'S hereby reserves any and all rights and defenses to Plaintiff's Complaint.

3. The Complaint filed and served on SMITH'S merely alleged that Plaintiff "sustained

1 injuries to Plaintiff's shoulders, back, bodily limbs, organs and systems, all or some which maybe
2 permanent and disabling, and all to Plaintiff's damage in a sum in excess of \$15,000.00." (Compl.
3 ¶17).

4 4. Defense counsel learned that the value of this case was sufficient for Federal
5 jurisdiction on August 30, 2017. On that date, Plaintiff filed and served a Request for Exemption
6 from Arbitration in the pending State Court litigation. Therein, Plaintiff alleges that "Plaintiff
7 suffered personal injuries with a value in excess of \$82,581.02." (Pl.'s Petition at 2).

8 Upon receiving this information, Defense counsel learned that the "amount in controversy"
9 exceeds the jurisdictional minimum for diversity jurisdiction.

10 5. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

11 If the case stated by the initial pleading is not removable, a notice of
12 removal may be filed within thirty days after receipt by the defendant,
13 through service or otherwise, of a copy of an amended pleading,
14 motion, order or other paper from which it may first be ascertained
15 that the case is one which is or has become removable, except that a
16 case may not be removed on the basis of jurisdiction conferred by
17 section 1332 of this title more than 1 year after commencement of the
18 action.

16 6. The following pleadings have been entered and/or filed in State Court:

- 17 a. Plaintiff's Complaint filed June 13, 2017;
18 b. Summons issued on June 13, 2017;
19 c. SMITH'S Answer to Plaintiff's Complaint filed August 23, 2017; and
20 d. Plaintiff's Request for Exemption from Arbitration was served on
21 August 30, 2017.

22 7. Other than the pleadings discussed above, no further proceedings have taken place in
23 District Court, Clark County, Nevada as of the filing of this notice of removal.

24 **II.**

25 **DIVERSITY JURISDICTION EXISTS**

26 8. This is a civil action over which this Court has original jurisdiction pursuant to 28
27 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in
28 controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between

1 citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

2 **A. The Amount in Controversy Requirement is Satisfied.**

3 9. Plaintiff's Complaint merely alleged that Plaintiff "sustained injuries to Plaintiff's
4 shoulders, back, bodily limbs, organs and systems, all or some which maybe permanent and
5 disabling, and all to Plaintiff's damage in a sum in excess of \$15,000.00." (Compl. ¶17).

6 10. Plaintiff's Request for Exemption from Arbitration, which was served electronically
7 on August 30, 2017, indicates that Plaintiff medical specials to date are \$82,581.02 (Pl.'s Petition
8 at 2).

9 **B. The Parties Are Diverse.**

10 11. The diversity of citizenship requirement is satisfied. SMITH'S is informed and
11 believes that Plaintiff was at the time of his Complaint a citizen and resident of the State of Nevada.
12 (See Compl. ¶1)

13 12. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio
14 Corporation with its principal place of business in the State of Utah.

15 **III.**

16 **REMOVAL TO THIS JURISDICTION IS PROPER**

17 13. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state
18 court action to this Court is appropriate.

19 14. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and
20 division embracing the place where the state action is pending 28 U.S.C. §108.

21 15. SMITH'S reserves the right to amend or supplement this Notice of Removal.

22 16. SMITH'S reserves all defenses, including, without limitation, the defense of lack of
23 personal jurisdiction.

24 17. SMITH'S requests a trial by jury of all issues.

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Dated this 12th day of September, 2017.

By /s/ Jerry S. Busby

CLAC 4101513.1